IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 25 OF 1995

1. Smt. Bhagirathi Jyotiram Kale,]
2. Smt. Laxmibai Jyotiram Kale,]
3. Parameshwar Jyotiram Kale,]
All resident of Chikhali, Taluka] .. Appellant
Mohol District Solapur.] (Ori.Accused)

Versus

The State of Maharashtra.] .. Respondents

Mr. Abhay Kumar Apte h/for Shri T.E. Mane, Advocate for the appellants.

Dr. F.R. Shaikh, APP, for the respondent-State.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 14TH MARCH, 2005

ORAL JUDGMENT: [Per Anoop V. Mohta, J.]

1. The appellants - accused Nos.1 to 3 were charged, tried and convicted of the offence under Section 498A(a) and (b) read with Section 34 of the Indian Penal Code (for short "IPC"), as well as, under Section 302 read with Section 34 IPC for murdering Nayana Parmeshwar Kale, the wife of appellant No.3 and daughter-in-law of appellant Nos.1 and 2. Therefore,

this common Appeal by the appellants.

2. The deceased had married appellant No.3 sometime in the year 1992. She was staying with all the accused at Chikhali, Taluka Mohol. Their relations were not good. The deceased, therefore, complained about the accused and also about the harassment for non honouring their demand at the time of marriage, to her brother Navnath Nagnath Kore, PW5. She had also reported that appellant No.3 was insisting for divorce. The matter was settled through PW3, Deepak Gaikwad, Chief of Mohol Tahsil and, therefore, the deceased started living with the accused. However, as per the complainant, appellants were insisting for divorce and wanted her thumb impression on the Divorce Deed. As the deceased refused and resisted the same, on 22nd March, 1994, appellant Nos.1 and 2 caught hold of her hands and accused No.3 poured kerosene on her and set her on fire. The deceased, therefore, suffered burn injuries. The deceased was taken to the Hospital by accused No.3, initially at Mohol and then she was shifted to the Civil Hospital, Solapur. PW10, Dr. Pradeep Joshi admitted the deceased on 22nd March, 1994, at about 10.00 a.m. with 90% burn injuries. As per the prosecution, on 22nd March, 1994, at about 10.00 a.m. in the morning, Dr. Chanchure informed the Police Head Constable, Civil

Hospital Police Chowky, Solapur, that Ganpat Mali (PW11), the cousin brother of the deceased, had admitted her in the hospital as the deceased had suffered 75% burn injuries at about 7.30 a.m. because of flaring up of the stove when she was preparing meals. The said information was recorded by Police Head Constable Vasant Tulshiram Salunke (PW9). Therefore, at about 10.00 a.m., Vasant visited the OPD and found that the deceased was under treatment and was not in a position to make any statement. He gave the *Yadi* (Exh.45) to the Medical Officer and enquired about the deceased. The Medical Officer gave an endorsement on the said *Yadi* that Nayana was not in a position to give any statement. The deceased was thereafter treated and was in the same condition upto 10.30 a.m. At 11.45 a.m., as Nayana was in a condition to make the statement, Vasant (PW9) contacted the Special Executive Magistrate (for short "SEM") Sharan Basappa Tarapure (PW12) and requested him, by giving *Yadi* (Exhibit-46, 46-A) to record the dying declaration of the deceased. The said *Yadi* was received by the SEM. The SEM signed the *Yadi* at about 12.00 noon. In the presence of Vasant (PW9), SEM Tarapure (PW12) recorded the dying declaration of the deceased. When the dying declaration was recorded, PW9, Vasant, was standing outside the Ward. As per the prosecution, at the relevant time, appellant No.3 and his neighbours

were present in the hospital. No relatives of the deceased from her parental side were present. After completing the formalities and requisite endorsement, dying declaration (Exh.55) was recorded and all those documents (Exh.44, 45, 46, 46A and 31) have been duly proved by SEM Tarapure (PW12) and PHC Vasant (PW9). The deceased however, succumbed to the injury on 27th March, 1994, after 5 days of the incident. The said dying declaration was also filed as a complaint (Exh.47), which was later on altered for the offence under Section 302, 498A and 34 of IPC. As per the prosecution, the death of the deceased was within 7 years of the date of her marriage. Dr. Sanjay Sawant, (PW2), on 27th March, 1994, after receipt of the dead body at 8.45 a.m., conducted the Post Mortem Examination and recorded in the Post Mortem Report (Exh.22), the burn injuries and opined that the deceased died because of toxaemia and shock due to 76 burn injuries.

3. The Panchanama of the scene of incident (Exhs.19 and 62) was drawn on 23rd March, 1994, by PSI Shankarrao Deshmukh (PW15). The Inquest Panchanama (Exh.53) is dated 27th March, 1994. The accused were arrested and after completion of due enquiry and investigation, all the accused were charged. They denied the charges and pleaded "not guilty". They have

filed their defence through Written Statement (Exh.70) in addition to statement under Section 313 of the Criminal Procedure Code [for short "Cr.P.C."]. As per the defence, the deceased had no interest in cohabiting with appellant No.3 as her marriage was without her will and, therefore, she used to run away to her parents' house frequently and never stayed continuously in her marital home. On the date of the incident, appellant No.2 was fetching water from a Well and on hearing commotion, she came and extinguished the fire. Appellant No.3, the husband of the deceased, was sleeping. He also extinguished the fire and in the process, received burn injuries. Appellant No.1, being an old woman aged 80 years and with a weak eyesight, was not even in a position to see properly. Therefore, all the accused submitted that they had no concern with the burn injuries. Therefore, their further defence was of false implication. They also relied on Exh.67, the *Yadi* issued by PSO, Mohol, to the Medical Officer, Rural Hospital, Mohol, wherein there is a reference of accidental burn injuries to the deceased.

4. The learned Judge, after considering all the material on the record, held all the accused guilty. We have heard the learned counsel Mr. Abhay Kumar Apte for the appellants and Dr. F.R. Shaikh, learned A.P.P.

for the State of Maharashtra. We have gone through the record in extenso with the assistance of the Advocates appearing for the parties. We have noted the submissions and counter submissions made by the parties.

5. There is no dispute that the deceased succumbed to the burn injuries on 27th March, 1994. The deceased, aged 18 years, died within 7 years' from the date of her marriage. The dying declaration was recorded on 22nd March, 1994, and the same remained unchanged till her death, which was on 27th March, 1994. All the accused were present at the relevant time in the house. As per the defence itself, appellant No.3 tried to extinguish the fire. Accused No.1, being an old lady, was also present in the house. The Panchanama of the scene of incident (Exhs.19 & 62) further corroborates the trace of kerosene on the spot in question, including stove, matchsticks, broken frames and shattered condition of utensils and other articles in the house. Appellant No.3 arranged for a jeep and took the deceased to Mohol and then to the Civil Hospital, Solapur. From the Panchanama of the scene of offence and/or from the map of the scene of offence, there is no utensils referred to, wherein the ash of burnt clothes was found, which could have been necessary for the purpose of preparing meals. Even though PW1,

Vijaykumar Chougule and PW14, Nilu More, the two Panch witnesses were declared hostile, they have not denied their signatures and preparation of the Panchanama. As per the Panchanama, the other articles which were attached included half-burnt saree, blouse, parkar, ash of clothes, pieces of glass. PW15, Shankarrao Deshmukh has deposed that on 23rd March, 1994, in the morning between 7.00 a.m. to 8.00 a.m., the Panchanama of the scene was drawn at the house of appellant No.3 with the help of Panchas Nilu More and Vijaykumar and they had also attached matchbox and glass bottle with kerosene smell. All these articles and the Panchanama were under the seal of the Panchas. He had further stated that he himself checked the kerosene smell on the spot and also in the glass bottle. Exh.62, the Panchanama, also supports and corroborates his version. Therefore, according to us also, the prosecution has proved the Panchanama of the scene of incident, as well as, attachment of articles like half-burnt saree, blouse, parkar, matchbox with sticks, large empty bottle of kerosene, ash of burnt clothes, broken pieces of glass of photoframe etc.

6. The learned Judge has rightly observed that the incident took place in the corner of the room where ash of burnt clothes was found. The three broken

photoframes and the glass pieces of photoframes further indicate the struggle on the spot resulting into the breaking of the photoframes. These glass pieces on the floor indicate the struggle, which might be the last attempt on the part of the deceased to save herself from the clutches of the accused and resulted into breaking of the photoframes and collapsing of some portion of the wall. This also indicates a scuffle at the time of the incident, damaging some portion of the wall. The learned Judge has further rightly observed that the clothes of all the accused had kerosene residue. PW13, Dattatraya Khatke, was the Panch witness to the clothes of the appellant Nos.1 and 2 (Exh.59). This witness has also identified those clothes. The only challenge which was made was that Dattatraya was admittedly a regular Panch witness of the Police. However, PW15 Shankarrao, one who had proceeded to the scene of offence and reached there at about 2.00 p.m. on the day of the incident, found all the accused in the house. He had arrested all the accused and attached the articles (Exhs.F,G,H,I,J & K) from the person of the accused (Exh.59). The said Panchanama bears the signature and endorsement of the Panchas. In this totality of the matter, it is difficult to believe the defence submission that the Panchanama (Exh.59) should not have been accepted. We are of the view that, in the facts

and circumstances of the case, the prosecution has proved the scene of offence and the panchanama (Exh.59). The Certificate of the Chemical Analyzer (Exh.66) further proves that kerosene residue was found in the clothes of the accused Nos.1 and 2. There is no challenge to the Chemical Analyzer's Report.

7. As per the defence, PSO, Mohol, had given a *Yadi* (Exh.67) after due enquiry, wherein a reference was made to the accidental burn injuries on the deceased because of flaring of the stove while she was preparing meal. There is another *Yadi* (Exh.44), which also refers about accidental burn injuries to the deceased. The recording of the accidental injury at that time must be at the instance of accused No.3 who was present in the jeep along with the deceased. The deceased was not in a position to make any statement. It is difficult to accept the statement of (PW11) Ganpat Mali that the deceased gave information to PSO, Mohol, about the accidental burns, without any supporting evidence or material on the record. When the deceased was admitted, she was unconscious and, as recorded, she had suffered 90% burn injuries. The information about the accidental burn injury by her is difficult to accept. All the entries, therefore, even if made during this period, till she regained consciousness, appears to be at the

instance of accused No.3 and his other relatives. Those entries of accidental death, in such circumstances, were possible.

8. An attempt was also made by the accused to suggest that the deceased had committed suicide. Read with their own earlier Written Statement in addition to the defence under Section 313 of the Cr.P.C., which further reflects the conduct of the accused. This is an additional link against the accused and in favour of the prosecution. As rightly observed by the learned Sessions Judge, all this goes to show that this was not a case of suicide, but it was homicidal death.

9. We have also noted that PW1 Vijaykumar, a Panch witness to the spot, was declared hostile. However, this witness has deposed that he had visited the spot immediately after hearing the commotion that the deceased had caught fire and he saw the burn injuries of the deceased. He stated that accused No.3 brought the jeep and took Nayana to Mohol. This witness has also deposed that accused No.1 is an aged woman of 80-85 years and not able to see or walk properly. This witness has, however, admitted his signature on the slips attached to the articles, including Exhibit-12/2 and Exhibit-12/3 i.e. matchbox and bottle apart from

Exhibit-A, B and C. Therefore, in a way, this witness has supported the Panchanama corroborated by the evidence of the Investigating Officer. (PW2), Dr. Sanjay conducted the post mortem examination and opined that the deceased died due to 76% burn injuries. This evidence remained intact as there was no cross-examination of any sort. (PW3), Deepak Gaikwad, an independent person, has supported the prosecution case fully about the matrimonial disputes and ill treatment. Dr. Jyotsna (PW4) who was attached to the Public Health Clinic, Mohol, immediately, on 22nd March, 1994, directed that the deceased be shifted to Civil Hospital, Solapur. She had also examined accused Nos.1 to 3 on 26th March, 1994. This witness has further deposed that accused No.2 was not having any spectacle, when examined. This witness has further stated that without the spectacles, she was unable to see. This witness has further deposed that when the deceased was admitted, no case papers were prepared or entered in any Register.

10. Navnath Kore (PW5), brother of the deceased also supported the prosecution’s case of harassment and ill treatment, including the dowry demand by the accused and specially by accused No.3. This witness has corroborated that the deceased had informed him about

the threat given by accused No.3. This witness has further deposed that the deceased informed him that at about 7.30 a.m., accused Nos.1 and 2 had caught hold of her hands and accused No.3 poured kerosene and set her on fire. This witness has deposed that they arrived at the Civil Hospital at about 4.00 p.m. to 4.30 p.m., after receiving information about the injury to the deceased. When he made enquiry from the deceased, she narrated the said incident. In the cross-examination, this witness has stated that on the Saturday, prior to the incident, i.e. on 19th March, 1994, accused No.2 Laxmibai had been to their place to take the deceased along with her. On 20th March, 1994, after persuasion, the deceased went with accused No.3. This witness has further deposed that all the three accused lived in the house and there was no one else living with them.

11. Mangal Kore (PW6), the aunt of the deceased again supported the prosecution case and also corroborated (PW5) Navanath about the ill treatment and harassment meted out by the accused to the deceased. She has also supported the prosecution case that after reaching the Civil Hospital, Solapur, at about 4.00 or 4.30 p.m., on enquiry, the deceased informed her that in the morning accused Nos.1 and 2 caught hold of her and accused No.3 set her on fire. In the cross-examination,

some omissions were pointed out to her about the time of reaching the Civil Hospital, Solapur. However, her basic testimony, implicating all the accused, remained intact.

12. The other witnesses are the Police witnesses (PW7) Govindsingh Gahirwal, the Police Constable who carried the articles to the Chemical Analyzer, Pune; PW8, Shivling Patil, who carried the muddemal recovered and went to the Chemical Analyzer and PW9, Vasant Salunkhe, the Police Head Constable supported the prosecution case fully. (PW9) has proved material documents including Exhibits 46, 47 and 48. This witness has also corroborated the evidence of SEM Tarapure (PW12). Therefore, there remains no doubt about the prosecution case and basically, the dying declaration of the deceased, read with the corroborated facts and circumstances mentioned above.

13. The other relevant witness is (PW10) Dr. Pradeep Joshi who was on emergency duty on 22nd March, 1994, at Civil Hospital, Solapur, who examined the deceased and in whose presence, the dying declaration was recorded by the SEM. This witness has proved the sound mental condition of the deceased to make the statement and further proved that the dying declaration

was recorded in his presence by the SEM. This witness has also proved that the deceased admitted the contents of the statement and affixed her thumb impression. This witness has further examined the deceased, after recording the statement, and also endorsed that she was fully conscious, well oriented and in a position to make statement and accordingly, the entry was made at Sr. No.2 on the case paper at about 2.00 p.m. Dr. Joshi has also made an endorsement that the patient was conscious enough and those statements are in his handwriting. Nothing could shake this witness in the cross-examination.

14. Ganpat Mali (PW11), a maternal uncle of the deceased turned hostile. He has not supported the prosecution case fully about the ill treatment.

15. PW12, SEM Tarapure corroborates the evidence of PW9 Vasant, PHC, PW10 Dr. Pradeep Joshi and has proved the dying declaration (Exhibit-46, 46A, 55, 56 and 57) of the deceased and other documents and its contents and supported the prosecution fully.

16. PW13, Dattatraya Khatke, is a Panch witness to the arrest and articles, who acted as a Panch witness in more than 3 to 4 times. PW14, Nilu More, who also acted

as a Panch witness at the house of the accused on 23rd March, 1994, was declared hostile, but this witness admits his signature on the Panchanama, including his signatures on the slips attached to the bottle and the matchbox.

17. PW15, Shankarrao Deshmukh, PSI attached to Mohol Police Station, fully supported the case of the prosecution. Nothing could shake the testimony of this witness. This witness has proved and corroborated the prosecution case, including Exhibits 47, 52, 55, 62, 63, 64, 65, 67 and 68.

18. The only statement (Exh.68) of Chitra Yadav could not be relied to support the case of defence that accused No.2 was fetching water at the relevant time and after hearing the commotion, they rushed to the house. They also relied on the evidence of PW11, Ganpat Mali. In the cross-examination by the accused, Ganpat stated as under:

> "It is not true that I met Chitrap Gunappa Yadav when I had been to the house of the accused on the day of incident. It is true that at the time of incident Chitra and accused No.2 Laxmibai were on the wall to fetch water. It is true that I also learn that after hearing commotion, both of them ran towards their house and they extinguished the fire."

We have also noted the common Written Statement filed by all the accused in support of their statement under Section 313 of the Cr.P.C. The evidence of Ganpat Mali is not supported by any other witness. The defence of the accused was not corroborated or supported by any other witness. The evidence of this witness is quite shaky and is not supported by any other witness. He has no personal knowledge of the incident. The burden lies heavily on accused No.2 to prove her case of alibi. She must establish her case of alibi and in the present case, we find that she has failed to discharge that burden. All the accused were present on the spot at the time of the incident, as narrated by the deceased in her dying declaration, and as supported further by the aunt and the brother of the deceased.

19. Taking into account the evidence of all these witnesses and after re-appreciating the same, we are of the view that the reasoning given by the learned Judge is correct and within the framework of law. The view taken by the learned Judge needs no interference.

20. We have noted in this matter that accused No.1 is stated to be an aged lady of 80 years, though not

proved. There is evidence on the record to show that she was weak in her eyesight, but the facts and circumstances of the case, including the dying declaration of the deceased, as well as, the testimony of the other witnesses supporting the prosecution case, left no doubt that all the accused, including accused No.1 committed the crime in question. Looking to the age of accused No.3, i.e. 22 years, it is doubtful that the ages of accused Nos.1 and 2 would be 80 and 60 years respectively. The dying declaration itself named all the three accused and as the corroborating evidence also supports the same, merely both accused No.1 and 2 are old ladies that itself is no reason to interfere with the order of conviction.

21. There is no merit in the Appeal. The Appeal is dismissed. The appellants shall surrender to their Bail Bonds forthwith.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]